

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

(SEAL)

/s/ John G. Strand  
Chairman

I concur in part, and dissent in part,  
as discussed in my separate opinion.

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of December 20, 1996.

/s/ Dorothy Wideman  
Its Executive Secretary

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application of )  
AMERITECH MICHIGAN for approval of )  
agreements with MFS INTELENET OF )  
MICHIGAN, INC., for interconnection of )  
their telecommunication networks. )  
\_\_\_\_\_ )

Case No. U-11098

**SEPARATE OPINION OF COMMISSIONER JOHN C. SHEA  
CONCURRING IN PART AND DISSENTING IN PART**

(Submitted on December 20, 1996 concerning order issued on same date.)

I join the majority opinion insofar as it approves Section 17.0 of the agreement at issue here. The remainder of the order either impermissibly relies on authority purportedly conferred on the Commission by the United States Congress instead of the Michigan Legislature or is not based on competent, material and substantial evidence as required by law. I therefore dissent from the remainder of the order.

  
\_\_\_\_\_  
John C. Shea, Commissioner

**Exhibit E**  
**Case No. U-11098**

**LISTING AND DIRECTORY SERVICES AGREEMENT BETWEEN**  
**AMERITECH ADVERTISING SERVICES AND**  
**MFS INTELENET, INC.**

**Dated May 17, 1996**

**LISTING AND DIRECTORY SERVICES AGREEMENT  
BETWEEN  
AMERITECH ADVERTISING SERVICES AND MFS INTELENET, INC.**

AGREEMENT made this 17th day of May, 1996 between Ameritech advertising services ("Publisher"), a Delaware corporation with principal offices at 100 East Big Beaver Road, Troy, Michigan 48083, and MFS Intelenet, Inc. ("MFS"), a Delaware corporation with principal offices at 999 Oakmont Plaza Drive, Suite 400, Westmont, Illinois 60559.

WHEREAS, Publisher is in the business of publishing and distributing Directories and other information products and services, and desires to acquire certain data and services from MFS in connection therewith; and

WHEREAS, Publisher is willing to provide certain services to MFS in connection with the Publication and distribution of Directories to Subscribers;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Agreement,

- 1.1 "Agreement" shall mean this agreement between MFS and Publisher;
- 1.2 "Directories" shall mean compilations of Subscriber Listings, Listing Updates and other printed or electronic information products.
- 1.3 "Directory Assistance Database" shall mean Ameritech's collection of subscriber information by listing type, including name, address and telephone number.
- 1.4 "Listing Update(s)" shall include information with respect necessary for Publisher to Publish Directories under th

depicted in Exhibit A and in the form of Exhibit B or such other form and format as the parties may agree.

- 1.5 "Local Exchange Carrier" or "LEC" shall mean a certified local exchange carrier, including Ameritech.
- 1.6 "Local Exchange Service" shall mean local switched telephone service originated through MFS' telecommunication facilities.
- 1.7 "Person" shall mean any individual, association, partnership, corporation or other legally recognized entity.
- 1.8 "Primary Listing" shall mean the single directory listing provided to Subscribers by Publisher under the terms of this Agreement. Each telephone configuration that allows a terminating call to hunt for an available line among a series of lines shall be considered a single Subscriber entitled to a single primary listing.
- 1.9 "Publish" or "Publication" shall mean selling, advertising, compiling, composing and producing Directories, promoting use, handling claims, packaging, distribution, transportation, determining product content, design, scoping, pricing and all other matters relating to the manufacture, marketing, sale and distribution of Directories.
- 1.10 "Resale Listing(s)" shall mean a list containing the names, the telephone numbers, addresses and zip codes of Resale Subscribers within the defined geographic area, except to the extent such Resale Subscribers have requested not to be listed in a Directory.
- 1.11 "Resale Local Exchange Service" shall mean local switched telephone service sold by MFS and provided through the telecommunication facilities of the Ameritech LEC.
- 1.12 "Resale Subscribers" shall mean any Person who contracts with MFS or its agents for Resale Local Exchange Service by MFS.

- 1.13 "Subscriber(s)" shall mean any Person who contracts with MFS or its agents for Local Exchange Service by MFS.
- 1.14 "Subscriber Listing(s)" shall mean a list containing the names, the telephone numbers, addresses and zip codes of Subscribers within a defined geographical area, except to the extent such Subscribers have requested not to be listed in a Directory.
- 1.15 "White Pages Directories" shall mean Directories or the portion of co-bound Directories which include a list in alphabetical order by name of the telephone numbers and addresses of telecommunication company subscribers.

## ARTICLE II PROVISION OF LISTING AND LISTING UPDATES

MFS will provide Subscriber Listings and Listing Updates to Publisher on a non-exclusive basis as follows:

- 2.1 *Subscriber Listings.* MFS shall provide its Subscriber Listings to Publisher substantially in form and format as depicted on Exhibits A and B.
- 2.2 *Listing Updates.* Within one business day of installation, disconnection or other change in service (including change of non-listed or non-published status) affecting the Directory Assistance Database or the Directory listing of a Subscriber, MFS shall provide Listing Updates to Publisher in accordance with Exhibit B or another mutually acceptable format.
- 2.3 *Mechanized Interface.* The parties will cooperate to develop a cost-effective, mutually satisfactory, mechanized or electronic process for the provision of MFS Listing Updates to Publisher.
- 2.4 *Use Restrictions.* Publisher may sell or license the use of Subscriber Listings, Resale Listings or Listing Updates to third parties without the prior written consent of MFS; provided, however, that Publisher will not

- i. disclose non-listed or non-published name and address information to any third party, except as may be necessary to undertake Initial Delivery or Subsequent Delivery of Directories, or to perform other services contemplated under this Agreement;
  - ii. disclose to any third party the identity of a subscriber's or resale subscriber's LEC;
  - iii. sell or license such customer listing information sorted by carrier.
- 2.5 *Resale Listings.* MFS shall provide its Resale Listings for inclusion in White Pages Directories to the Ameritech LEC as part of MFS' purchase of Resale Local Exchange Service in a form and format as may be required by the Ameritech LEC.

### ARTICLE III DIRECTORY PUBLICATION AND LISTING SERVICES

- 3.1 *White Pages Publication.* Publisher shall include Subscriber Listings and Resale Listings in its White Pages Directories under the following terms and conditions:
- 3.1.1 Publisher shall Publish the Primary Listing of Subscribers and Resale Subscribers located within the geographic scope of Publisher's Directories at no charge to Subscribers or Resale Subscribers.
  - 3.1.2 Listings of Subscribers and Resale Subscribers will be interfiled with listings of subscribers of Ameritech and other LECs serving the same geographic area where such listings are included within a Directory.
  - 3.1.3 Upon reasonable request, Publisher shall provide MFS with copies of such listings prior to Publication in such form and format as may be mutually agreed to by the parties. Both parties shall use their best efforts to ensure the accurate listing of such information.

- 3.1.4 Publisher must receive all Subscriber Listings and Resale Subscribers prior to the service order close date for the Directory in which those listings are to appear. Publisher will provide MFS with appropriate service order close dates within thirty (30) days of this information becoming available, or at least six (6) months prior to such service order close dates, whichever period shall be longer.
- 3.2 *Other Directories.* Publisher may include, at no charge, Subscriber Listings and Resale Listings in other Directories published by Publisher or its affiliate.
- 3.3 *Consideration.* Publisher shall include the Primary Listings of Subscribers and Resale Subscribers in its White Pages Directories at no charge.

#### ARTICLE IV DIRECTORY ASSISTANCE DATABASE SERVICES

- 4.1 *Inclusion in Directory Assistance Database.* Publisher shall forward all Subscriber Listings and Listing Updates to Ameritech for inclusion in the Ameritech Directory Assistance Database. The terms and conditions under which such information is included in the Directory Assistance Database are set forth in a separate agreement between Ameritech and MFS.
- 4.2 *Accuracy.* Both parties shall use their best efforts to ensure the accurate listing of such information in the Directory Assistance Database.

#### ARTICLE V OTHER TERMS AND CONDITIONS

- 5.1 *Mutual Indemnity.* Except as otherwise provided in this Agreement, each party (the "Indemnitor") shall defend and indemnify the other (the "Indemnitee") from any and all claims, demands, suits or damages (including reasonable attorney fees), whether based on contract or tort, arising out of or in connection with the performance of its obligations under this Agreement, unless caused by the negligence or willful acts of the Indemnitee. In no event shall either party be



liable for any incidental, punitive, special, or consequential damages or lost profits incurred or alleged to have been incurred by anyone.

5.1.1 It is understood that either party may have tariffs or contracts that limit its liability for any errors or omissions in the performance of the obligations under this Agreement, and to the extent the terms of such tariffs or contracts are enforceable, such terms shall be applicable.

5.1.2 The parties shall provide to each other any assistance reasonably required to defend any claim, demand, suit or complaint involving Directories published under this Agreement.

5.2 *Subcontracting.* Publisher shall have full power and authority to enter into contracts with third parties to perform the services to be provided by it under this Agreement. Upon notice from Publisher, MFS agrees to cooperate with such third parties to the extent reasonably requested by Publisher. Nothing in this Paragraph shall relieve Publisher of its obligations to MFS under this Agreement, except as expressly agreed in writing by MFS.

5.3 *Other Business; No interest Created.* Except as otherwise specifically provided in this Agreement, nothing contained herein shall be deemed to limit or restrict either party in the conduct of its business, nor shall anything in this Agreement be deemed to create any interest in favor of MFS or Publisher in the assets, revenues, earnings or otherwise in the business of the other.

5.4 *Use of Name, Marks.* Publisher may use MFS's name and trademark for the limited purpose of publishing Directories in accordance with the terms of this Agreement. Publisher shall notify MFS prior to any such Publication and MFS shall review and approve of the use of its name and trademark in accordance with Paragraph 5.18. Nothing in this Agreement shall obligate Publisher to use MFS's name or trademarks on its Directories, nor shall anything in this Agreement preclude Publisher from using the names or trademarks of any other telecommunications providers in connection with publishing Directories or providing other products or services.

5.5 *Notices.* All notices or other communications under this Agreement shall be in writing and shall be deemed to have been given if mailed first class postage prepaid by United States mail, overnight express mail, personal delivery, telegram, telex or facsimile.

5.5.1 Notices to MFS shall be given to:

MFS Intelenet, Inc.  
999 Oakmont Plaza Drive, Suite 400  
Westmont, Illinois 60559  
Attn: Director Regulatory Affairs - Central Region  
Fax No: (708) 203-2525

5.5.2 Notices to Publisher shall be given to:

Ameritech advertising services  
100 E. Big Beaver Road, Suite 1300  
Troy, Michigan 48083  
Attention: Director - Competitive Telecommunications Services  
Fax No: (810) 524-7227

or at such other address as either party may hereafter designate by written notice.

5.6 *Binding Effect.* This Agreement shall be binding on and inure to the benefit of the parties, and their respective successors and assigns.

5.7 *Governing Law.* This Agreement shall be governed by and construed under and in accordance with the laws of the state where the services giving rise to the dispute have been performed.

5.8 *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement, and supersedes any prior agreements, between the parties with respect to the subject matter hereof, including those portions of the Interim Agreement for Operator Services, dated June 7, 1995, between Illinois Bell Telephone Company and MFS Intelenet of Illinois, Inc. with respect to white and yellow page listings. There are no other understandings, representations or warranties, oral or written, relating to the subject matter. This Agreement may not be amended except by a written instrument executed by both parties.

- 5.9 *Severability.* If any provision of this Agreement or the application thereof to any Person or circumstance is held to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected, and the Agreement shall be enforced to the greatest extent permitted by law.
- 5.10 *Compliance with Legal and Regulatory Requirements.* In providing services under this Agreement, the parties shall comply with all legal and regulatory requirements relating to the production, Publication, promotion and distribution of Directories and the provision of listings, the Information Pages or other Subscriber information, including, without limitation, any rules, regulations or orders of the Federal Communications Commission, the United States District Court for the District of Columbia and any other local, state or federal regulatory authority with jurisdiction hereof. Each party shall notify the other of any legal or regulatory requirements imposed on such party that may affect the performance of this Agreement.
- 5.11 *Headings.* The headings in this Agreement are for convenience only and are not a part of this Agreement.
- 5.12 *Term and Termination.* This Agreement shall be effective on the execution date hereof and shall apply to all Directories published with a service order close date on or after that date. This Agreement shall terminate five (5) years after such execution date unless earlier terminated or extended as provided in this Agreement.
- 5.12.1 This Agreement shall be automatically renewed from year to year unless either party gives written notice of termination at least six (6) months in advance of the original or any renewal termination date.
- 5.12.2 This Agreement may be terminated by either party in the event the other party materially breaches its obligations under the Agreement, provided, however, that written notice of the breach is provided not less

that ninety (90) days prior to termination and the other party fails to cure the breach within sixty (60) days of notice of breach.

- 5.13 *Confidentiality.* The terms of this Agreement shall be kept confidential and shall not be disclosed to any third party, including Ameritech's local exchange operations, without the prior written consent of the parties, except as may be necessary to perform under or enforce this Agreement, or to comply with the terms of a subpoena, or other legal process or order. If either party provides confidential information, the receiving party shall protect the confidential information from disclosure to third parties, including Ameritech's local exchange operations, with the same degree of care afforded its own confidential and proprietary information, except that neither party shall be required to hold confidential any information which becomes publicly available other than by breach of this Agreement, which is required to be disclosed by a governmental or judicial order, which is required to be disclosed by statute, which is independently developed by the receiving party or which becomes available to the receiving party without restriction from a third party. All Subscriber Listings and Listing Updates shall be deemed confidential information for purposes of this Agreement. These obligations shall survive expiration or termination of this Agreement.
- 5.14 *Surviving Obligations.* Obligations of the parties which by their nature are continuing shall survive the expiration or termination of this Agreement.
- 5.15 *Force Majeure.* Neither party shall be held liable for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, inability to secure material or transportation facilities, act or omission of carriers or other similar event beyond its control. Upon occurrence of such an event under this Paragraph, the party whose performance is affected shall give immediate notice to the other party, which shall then have the option of suspending this Agreement for the duration of the event.

- 5.16 *No Third Party Rights.* The provisions of this Agreement are intended solely for the benefit of the parties to this Agreement, and no third-party beneficiary or other rights are created in favor of any other Person or entity.
- 5.17 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original.
- 5.18 *Verification.* Prior to any Publication, Publisher shall deliver to MFS pages of such Directory reflecting and describing Publisher's proposed use of MFS' name and trademark. All such Directory pages shall be subject to MFS' review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Publisher acknowledges and agrees that it shall not be unreasonable for MFS to withhold its approval where Publisher's use of such information would violate the terms of this Agreement. If MFS shall fail to approve or disapprove of such Directory pages within five (5) days after delivery to MFS, such pages shall be deemed approved by MFS.
- 5.19 *Assignment.* Neither party may assign or otherwise transfer this Agreement or the rights herein granted without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, each party shall not be required to obtain the consent of the other for an assignment or transfer to any affiliate, any purchaser of all or substantially all of the assets, or any Person with which or into which such party may merge or consolidate.
- 5.20 *Right of Audit.* Each of the parties may audit the records and operations systems of the other party as they pertain to the obligations to be performed pursuant to this Agreement.
- 5.21 Nothing in this Agreement shall restrict Publisher's authority as publisher of the Directories from altering the geographic scope, directory life, headings, content or format of the Directories.

IN WITNESS WHEREOF, and intending to be legally bound hereby, MFS and Ameritech advertising services have caused this Agreement to be duly executed on the date set forth below.

MFS INTELENET, INC.

By:

Alex J. Han

Its:

Vice President Regulatory Affairs

AMERITECH ADVERTISING SERVICES

By:

Peter J. McNeill

Its:

President

**EXHIBIT A**  
**LISTING UPDATE INFORMATION**

| Information                     | Comments   |
|---------------------------------|--|
| Company ID                      | MFSX   |
| CLEC Order Number               | MFS order number.  |
| Ameritech Related Number        | Ameritech order to associate with MFS order.   |
| Transaction Code                | New listing, change, delete, etc. (four digit code).   |
| New Connect Directory           | "Y" or "N" to deliver directory immediately.   |
| Completion Date                 | Date order is effective.   |
| Business/Resident Indicator     | "B" or "R"   |
| Record Type                     | Main/Additional/Caption (M, O, C).   |
| Advance Listing Code            | "AVL," if applicable.  |
| Yellow Page Heading Code        | Four digit code (business only).   |
| Annual Delivery Quantity        | Leave blank if one copy is desired.  |
| Previous Telephone Number       | This would only be supplied for new orders.  |
| Referral Telephone Number       | This would only be supplied for disconnect orders, if available.                                       |
| Local Exchange Carrier          | Subscriber's former LEC on new order; Subscriber's future LEC on disconnect orders, if available.      |
| Type of Account                 | Government, school, etc.   |
| List Type                       | 1, 2, 3, 4, 8, A.  |
| Omit From Consumer List         | "X" if applicable.   |
| New/Changed Listing Information | Customer name, telephone number, and address.  |
| Current Listing Information     | Change order only, used to ensure correct information replaces MFS' current information in the system. |
| Delivery Information            | Complete address for delivery required.  |

# **AMERITECH WHITE AND YELLOW PAGE LISTINGS ENTRY INFORMATION**

|   |                                 |  |
|---|---------------------------------|--|
| COMPANY ID _____  | CLEC ORDER NUMBER _____         | AMERITECH RELATED NUMBER _____                   |
| TRANSACTION CODE _____  | COMPLETION DATE _____           | ADVANCE LISTING CODE _____                       |
| RECORD TYPE<br>M = MAIN LISTING<br>O = ADDL LISTING<br>C = CAPTION  | LOCAL EXCHANGE CARRIER _____    | BUSINESS = B<br>RESIDENCE = R<br>INDICATOR _____ |
| ANNUAL DELIVERY QUANTITY _____  | PREVIOUS TELEPHONE NUMBER _____ | YELLOW PAGE HEADING CODE _____                   |
| NEW CONNECT DIRECTORY _____   | REFERRAL TELEPHONE NO. _____    | STANDARD INDUSTRIAL CODE _____                   |
| TYPE OF ACCOUNT (CIRCLE ONE IF APPLICABLE)<br>COUNTY _____ CITY _____ U.S. _____ STATE _____ SCHOOL _____ |                                 |  |

## **MAIN LISTING INFORMATION**

| NEW/CHANGED LISTING INFORMATION   |                  |                                   |                 | CURRENT LISTING INFORMATION       |                  |                                   |                 |
|-----------------------------------|------------------|-----------------------------------|-----------------|-----------------------------------|------------------|-----------------------------------|-----------------|
| Telephone No. _____               |                  | List Type: _____                  |                 | Telephone No. _____               |                  | List Type: _____                  |                 |
| Name: _____                       |                  |                                   |                 | Name: _____                       |                  |                                   |                 |
|                                   |                  |                                   |                 |                                   |                  |                                   |                 |
| List Address: _____               | House No.: _____ | Directional: _____                |                 | List Address: _____               | House No.: _____ | Directional: _____                |                 |
| Street Name: _____                |                  | Thoroughfare: _____               |                 | Street Name: _____                |                  | Thoroughfare: _____               |                 |
| Community Name: _____             |                  | Location: _____                   | Zip Code: _____ | Community Name: _____             |                  | Location: _____                   | Zip Code: _____ |
| Omit Address From Directory _____ |                  |                                   |                 | Omit Address From Directory _____ |                  |                                   |                 |
| Tel. No. Phrase: _____            |                  |                                   |                 | Tel. No. Phrase: _____            |                  |                                   |                 |
| Service Address: _____            | House No.: _____ | Directional: _____                |                 | Service Address: _____            | House No.: _____ | Directional: _____                |                 |
| Street Name: _____                |                  | Thoroughfare: _____               |                 | Street Name: _____                |                  | Thoroughfare: _____               |                 |
| Community Name: _____             |                  | Location: _____                   | Zip Code: _____ | Community Name: _____             |                  | Location: _____                   | Zip Code: _____ |
| Omit From Consumer List _____     |                  | Omit From Address Directory _____ |                 | Omit From Consumer List _____     |                  | Omit from Address Directory _____ |                 |

## **BILL INFORMATION (IF DIFFERENT FROM LIST)**

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 \_\_\_\_\_ Location (Apt., Etc.: \_\_\_\_\_  
 \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Number of Foreign/Additional Listing Pages Included: \_\_\_\_\_  
 Remarks/File As Info.: \_\_\_\_\_



In the Matter of

CC Docket No. \_\_\_\_\_

Volume 1.3:  
Interconnection Agreement between  
MFS Intelenet of Michigan, Inc.  
and  
Ameritech Michigan

## **AGREEMENT**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and ALEC-1, a \_\_\_\_\_ corporation and shall be deemed effective as of June 1, 1996. This agreement may refer to either BellSouth or ALEC-1 or both as a "party" or "parties. "

## **WITNESSETH**

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, ALEC-1 is an alternative local exchange telecommunications company ("ALEC") authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996; and

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and ALEC-1 agree as follows:

### **I. Definitions**

**A.** Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**B. Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. **Intermediary function** is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than ALEC-1; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or ALEC-1 to an end user of BellSouth or ALEC-1.

D. **Local Traffic** is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

E. **Local Interconnection** is defined as 1) the delivery of local traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; 2) the LEC unbundled network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

F. **Percent of Interstate Usage (PIU)** is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "nonintermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "nonintermediary", local, interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating party pays services.

G. **Percent Local Usage (PLU)** is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all "nonintermediary" local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating party pays minutes of use.

H. **Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

I. **Multiple Exchange Carrier Access Billing ("MECAB")** means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Bellcore as Special Report SR-BDS-000983, Containing the recommended guidelines for the billing of Exchange

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

## II. Purpose

The parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each parties' obligations under sections 251, 252 and 271 of the Act. The access and interconnection obligations contained herein enable ALEC-1 to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The parties agree that ALEC-1 will not be considered to have any state within BellSouth's region until such time as it has ordered interconnection facilities for the purposes of providing business and/or residential local exchange service to customers. At that time, this Agreement may be amended to include the other state or states. The term of this Agreement shall remain as set forth in Section III(A) even for any such additional states. To the extent the items in 47 U.S.C. § 271(c)(2)(B) are contained within this Agreement, the parties agree that with the execution of this Agreement, BellSouth has met the requirements of 47 U.S.C. § 271(c)(2)(B).

## III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning \_\_\_\_\_

B. The parties agree that by no later than \_\_\_\_\_, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning \_\_\_\_\_.

C. If, within 135 days of commencing the negotiation referred to in Section III (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the Commission to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate local interconnection arrangements no later than \_\_\_\_\_. The parties further agree that in the event the Commission does not issue its order prior to \_\_\_\_\_ or if the parties continue beyond \_\_\_\_\_ to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to \_\_\_\_\_. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

**IV. Local Interconnection (47 U.S.C. §251(c)(2), §252(d)(1),(2), §271(c)(2)(B)(i))**

**A.** The parties intend that the interconnection of their equipment, facilities and networks pursuant to this section complies with the requirements of sections 251, 252 and 271 of the Act.

**B.** The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

**C.** Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made.

**D.** The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

**E.** The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

F. The parties agree to accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established at each and every BellSouth access tandem within the local calling area ALEC-1 desires to serve for interconnection to those end offices that subtend the access tandem. In addition, ALEC-1 may elect to interconnect directly at the end offices for interconnection to end users served by that end office. BellSouth will connect at each end office or tandem inside the local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. The parties further agree that in the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate access tariff, as amended from time to time will apply.

G. The parties agree to establish trunk groups from the interconnecting facilities of subsection (E) of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

H. Whenever BellSouth delivers traffic to ALEC-1 for termination on ALEC-1's network, if BellSouth cannot determine, because of the manner in which ALEC-1 has utilized its NXX codes, whether the traffic is local or toll BellSouth will not compensate ALEC-1 pursuant to this section but will, instead, charge ALEC-1 originating intrastate network access service charges as reflected in BellSouth's intrastate Access Service Tariff. Notwithstanding the foregoing, BellSouth will make the appropriate billing adjustments if ALEC-1 can provide sufficient information for BellSouth to make a determination as to whether said traffic was local or toll. If BellSouth deploys an NXX code across its local calling areas in such a manner that ALEC-1 cannot determine whether the traffic it delivers to BellSouth is local or toll, this subsection shall apply to the parties.

I. If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) an ALEC other than ALEC-1; (2) a local exchange telecommunications company other than BellSouth ("ICO"); or (3) another telecommunications company such as a wireless telecommunications service provider, the party performing the intermediary function will

bill a \$.002 per minute charge over and above the local interconnection rates set out in this section. The parties agree that any billing to the ICO or other telecommunications company under this section shall be pursuant to subsection (K) of this section.

J. When the parties provides an access service connection between an interexchange carrier ("IXC") and each other, each party will provide their own access services to the IXC on a multi-bill, multi-tariff meet-point basis. Each party will bill its own access services rates to the IXC with the exception of the interconnection charge. The interconnection charge will be billed by the party providing the intermediary tandem function.

K. The parties agree to adopt MECAB as the terms and conditions for meet point billing for all traffic to which MECAB applies, including traffic terminating to ported numbers, and to employ 30 day billing periods for said arrangements. The recording party agrees to provide to the initial billing company, at no charge, the switched access detailed usage data within a reasonable time after the usage is recorded. The initial billing company will provide the switched access summary usage data to all subsequent billing companies within 10 days of rendering the initial bill to the IXC. The parties agree that there will be technical, administrative, and implementation issues associated with achieving the intent of this subsection. As such, the parties further agree to work cooperatively toward achieving the intent of this provision within nine months of the effective date of this Agreement.

L. The ordering and provision of all services purchased from BellSouth by ALEC-1 shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Facilities Based) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

#### **V. IntraLATA and InterLATA Toll Traffic Interconnection**

A. The delivery of intrastate toll traffic by a party to the other party shall be reciprocal and compensation will be mutual. For terminating its toll traffic on the other party's network, each party will pay BellSouth's intrastate terminating switched access rate, inclusive of the Interconnection Charge and the Carrier Common Line rate elements of the switched access rate. The parties agree that their terminating switched access rates may change during the term of this Agreement and that the appropriate rate shall be the rate in effect when the traffic is terminated.

B. For originating and terminating intrastate toll traffic, each party shall pay the other BellSouth's intrastate switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in BellSouth's Intrastate Access Services Tariff as that Tariff is amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call. If ALEC-1 is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses ALEC-1 as an interexchange carrier on a 10XXX basis,

BellSouth will charge ALEC-1 the appropriate tariff charges for originating network access services. If BellSouth is serving as the ALEC-1 end user's presubscribed interexchange carrier or if the ALEC-1 end user uses BellSouth as an interexchange carrier on a 10XXX basis, ALEC-1 will charge BellSouth the appropriate BellSouth tariff charges for originating network access services.

C. The parties agree that to the extent ALEC-1 provides intraLATA toll service to its customers, it may be necessary for it to interconnect to additional BellSouth access tandems that serve end office outside the local calling area.

D. BellSouth agrees to compensate ALEC-1, pursuant to ALEC-1's published originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to BellSouth.

E. ALEC-1 will provide to BellSouth the appropriate records necessary for BellSouth to bill BellSouth's intraLATA 800 customers. The records provided by ALEC-1 will be in a standard EMR format for a fee, paid by BellSouth to ALEC-1, of \$0.013 per record.

F. If ALEC-1 provides 800 services to its end users during the term of this Agreement, it agrees to compensate BellSouth, pursuant to BellSouth's originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to ALEC-1. BellSouth agrees to provide ALEC-1 the appropriate records for ALEC-1 to bill its 800 customers. The records provided will be in standard EMR format for a fee, to be paid by ALEC-1 to BellSouth, of \$0.013 per record.

G. If during the term of this Agreement, BellSouth is permitted to provide interLATA 800 services, BellSouth will compensate ALEC-1 for the origination of such traffic pursuant to subsection A, above. ALEC-1 shall provide the appropriate records for billing pursuant to subsection B, above.

H. Should ALEC-1 require 800 Access Ten Digit Screening Service from BellSouth, it shall have signaling transfer points connecting directly to BellSouth's local or regional signaling transfer point for service control point database query information. ALEC-1 shall utilize SS7 Signaling links, ports and usage as set forth in Attachment C-7, incorporated herein by this reference. ALEC-1 will not utilize switched access FGD service. 800 Access Ten Digit Screening Service is an originating service that is provided via 800 Switched Access Service trunk groups from BellSouth's SSP equipped end office or access tandem providing an IXC identification function and delivery of call to the IXC based on the dialed ten digit number. The rates and charges for said service shall be as set forth in BellSouth's Intrastate Access Services Tariff as said tariff is amended from time to time during the term of this Agreement.



**VI. Service Provider Number Portability (47 U.S.C. §251(b)(2) and §271(c)(2)(B)(xi))**

**A.** The parties intend that the number portability provided pursuant to this section to comply with the requirements of sections 251, 252, and 271 of the Act.

**B.** Service Provider Number Portability (SPNP) is an interim service arrangement provided by each party to the other whereby an end user, who switches subscription of his local exchange service from BellSouth to ALEC-1, or vice versa, is permitted to retain use of his existing assigned telephone number, provided that the end user remains at the same location for his local exchange service or changes locations and service providers but stays within the same serving wire center of his existing number. SPNP services are available in two arrangements, SPNP-Remote and SPNP-DID. Notwithstanding the foregoing, SPNP is not available when the end user's existing account has been denied or disconnected for nonpayment and an outstanding balance remains unpaid.

**C.** SPNP services and facilities will only be provided, where technically feasible, subject to the availability of facilities and may only be furnished from properly equipped central offices. SS7 Signaling is required for the provision of SPNP services. SPNP is available from either party on either a per DS0, DS1 or DS3 basis. Where SPNP-DID is provided on a DS1 or a DS3 basis, applicable channelization rates as specified in Attachment C-16, incorporated herein by this reference. SPNP is available only for basic local exchange service. Section E6.8.1.H of the BellSouth intrastate Switched Access tariff, as said tariff is amended from time to time during the term of this Agreement.

**D.** SPNP is available only where ALEC-1 or BellSouth is currently providing, or will begin providing concurrent with provision of SPNP, basic local exchange service to the affected end user. SPNP for a particular ALEC-1 assigned telephone number is available only from the central office originally providing local exchange service to the end user. SPNP for a particular assigned telephone number will be disconnected when any end user, Commission, BellSouth, or ALEC-1 initiated activity (e.g. a change in exchange boundaries) would normally result in a telephone number change had the end user retained his initial local exchange service.

**E.** SPNP-Remote is a telecommunications service whereby a call dialed to an SPNP-Remote equipped telephone number, is automatically forwarded to an assigned seven or ten digit telephone number within the local calling area as defined in Section A3 of the BellSouth General Subscriber Service Tariff. The forwarded-to number is specified by ALEC-1 or BellSouth, as appropriate. Where technologically feasible, the forwarding party will provide identification of the originating telephone number, via SS7 signaling, to the receiving party. Neither party guarantees, however, identification of the originating telephone number to the SPNP-Remote end user.